



Oversight of Rulemaking

Introduction

The oversight process for rulemaking is not a single process and is not codified in a single provision. Statutes relating to review of rules appear in Iowa Code §§7.17, 17A.4, 17A.4A, 17A.5, and 17A.8. Moreover, review of rules is not limited to any one entity; there are several entities responsible for review of rules in various respects.

- **General Assembly.** Agencies do not have any innate rulemaking authority, only that which is delegated to them by enactment of the General Assembly. The General Assembly can modify or restrict an agency's rulemaking authority in general or as it relates to a particular subject by enactment of regular legislation. The General Assembly can also nullify any rule through a joint resolution approved by both chambers.
- **Governor.** The Governor holds the "supreme executive power" in Iowa under Art. IV, §1, of the Iowa Constitution and hence has a constitutional mandate to direct the operations of the executive branch.
- **Administrative Rules Coordinator (ARC).** The ARC is established in the Governor's office and provides the Governor with direct control and oversight of the rulemaking process. The ARC generally advises the Governor on rulemaking matters, assigns ARC numbers to all rule filings for tracking purposes, and facilitates gubernatorial review of rule filings. Notices of intended action are precleared by the ARC before publication in the Iowa Administrative Bulletin (IAB).
- **Administrative Rules Review Committee (ARRC).** This statutory legislative committee provides general oversight of the rulemaking process on behalf of the whole General Assembly.
- **Attorney General.** The Attorney General maintains an attorney-client relationship with agencies and advises them on rulemaking matters. In addition to providing legal advice, the Attorney General can object to rules pursuant to §17A.4(6) and object to the use of certain emergency rulemaking procedures pursuant to §17A.4(3)(b).

The Major Oversight Powers and Framework

Each reviewing entity has one or more powers that it can exercise over rulemaking to influence or delay the process. Only the Governor and the General Assembly have the power to eliminate a rule outright. The more significant oversight powers are:

- The session delay. The ARRC, by a two-thirds vote, can delay the effective date of an adopted rule until the adjournment of the next regular session of the General Assembly. The ARRC refers the delayed rule to the Speaker of the House and the President of the Senate. The rule is then forwarded to the appropriate standing committee in each chamber for study and possible legislative action. §17A.8(9)
- The 70-day delay. The ARRC, by a two-thirds vote, can delay the effective date of an adopted rule by 70 days. §17A.8(10)

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- The objection. The objection is used almost exclusively by the ARRC but is also available to the Governor and the Attorney General. An objection articulates one or more specific legal defects of a rule and removes the presumption of validity that courts generally accord to action by an agency. The text of the objection is published in the Iowa Administrative Code following the rule. If an agency loses a legal challenge to a rule in which the grounds for the objection are at issue, the agency must pay court costs and reasonable attorney fees. This power can be exercised over any rule, whether proposed or in effect. §17A.4(6)
- Suspension of notice. The ARRC, by a two-thirds vote, can postpone action by an agency on a notice of intended action for 70 days. §17A.4(8)
- The general referral. The ARRC can refer any rule, whether proposed or in effect, to the General Assembly for further study. This action does not impact the legality or implementation of a rule. It is simply a mechanism to bring particular rules issue to the attention of the General Assembly. §17A.8(7)
- The regulatory analysis. The ARRC, the ARC, or 25 persons who qualify as small businesses can request a regulatory analysis for a noticed or emergency rule. The analysis is a cost-benefit analysis of the proposal comparing the anticipated benefits against the long term costs of the rule. Requirements for the analysis vary depending on the form of the request. For non-emergency rules, the notice cannot be adopted until after a summary of the analysis is published in the IAB. §17A.4A
- Legislative nullification. Under the Iowa Constitution, the General Assembly has the power to nullify any rule by resolution. The process is similar to the enactment of a bill, requiring an absolute majority vote in each chamber, except that it does not require the signature of the Governor. Iowa Constitution, Art. III, §40
- The gubernatorial rescission. The Governor can rescind any rule within 70 days after it becomes effective. This is accomplished by executive order. §17A.4(7)

Many of these powers are tied to the rulemaking process. Review of a rule can occur at any time, but only limited authority can be exerted outside of the rulemaking process. The oversight framework largely extends to the period between submission of the notice of intended action for publication in the IAB to the final effective date of the adopted rule.

The public segment of the review process occurs at the monthly meetings of the ARRC. The ARC sits on the ARRC as an ex officio, non-voting member. The meetings generally review all rules published as a notice of intended action and most rules published after adoption. The ARRC can selectively review rules already in effect as well.

Standing committees of the General Assembly can review rules at any time. Any legislative action to overturn a rule either by bill or nullification resolution could occur during a regular or special session of the General Assembly.

Oversight of the Emergency Rulemaking Process

All rules filed without notice under §17A.4(3), generally referred to as “emergency rules,” must be approved by the ARRC unless specifically authorized by statute. ARRC approval requires a majority vote. The ARRC must find good cause that “notice and public participation would be unnecessary, impracticable, or contrary to the public interest.”

Within 35 days of publication of an emergency rule in the IAB, the ARRC can suspend the applicability of the rule for 70 days or suspend applicability until the adjournment of the next

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regular session of the general assembly under §17A.8(9) and (10). Both actions require a two-thirds vote. If a session suspension is imposed on an emergency rule, the rule is referred to the Speaker of the House and the President of the Senate, who will forward the rule to the appropriate standing committee in each chamber for study and possible legislative action.

Under §17A.4(3)(b), the ARRC, Governor, and Attorney General also have the power to sunset an emergency rule by filing an objection to the use of the emergency process; that sunset is effective 180 days after the objection is filed. If the ARRC votes the objection, it can also vote to suspend the applicability of the emergency rule until the sunset takes place and the suspended rule becomes void. Both ARRC powers require a two-thirds vote.

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